

Remarks

Claims 1-7 are pending in the present application. Reconsideration and allowance are requested in view of the above amendments and the remarks below. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Furthermore, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application.

The rejection under 35 U.S.C. 101 is moot in view of the cancellation of claims 8 and 9.

Claims 1-9 are rejected under 35 U.S.C. 102(b) over Skemer (U.S. 2001/0044893). This rejection is defective because Skemer fails to disclose each and every feature of the claims as required by 35 U.S.C. 102(b).

Claim 1 sets forth:

"A method executed by a NAS communication loss detector agent on a computing system, providing robustness to an accounting function of user sessions established by at least one NAS in an IP network, the accounting function being performed on a RADIUS server storing an ID, IP address and secret code for each of the at least one NAS and information identifying each established session, said method comprising the steps of:

- identifying for the RADIUS server, the NAS communication loss detector agent as a RADIUS client of the RADIUS server,
- repeatedly polling from the NAS communication loss detector agent the at least one NAS and, if no answer is received from at least one non-responding NAS after a predetermined period of time and a predetermined number of repeated pollings,
- sending from the NAS communication loss detector agent a RADIUS stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS."

Skemer fails to disclose, *inter alia*, "polling from the NAS communication loss

detector agent the at least one NAS and, if no answer is received from at least one non-responding NAS, sending from the NAS communication loss detector agent a RADIUS stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS.”

In the Office Action, the Examiner equates the claimed “polling from the agent the at least one NAS and, if no answer is received from at least one non-responding NAS sending from the agent a RADIUS stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS” with the “polling” performed by Skemer’s SNMP management station. This is incorrect. On the contrary, Skemer discloses that the “SNMP management station periodically ‘polls’ the IAD SNMP agent to **upload the accumulated statistics**” (paragraph [0056]). Clearly, Skemer’s SNMP management station is not used to poll at least one NAS in **order to determine if any of the NASs is not responding**, as set forth in claim 1 of the present patent application, nor is a negative (i.e., non-responsive) result of Skemer’s polling used to send “from the NAS communication loss detector agent a RADIUS stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS.”

The claimed “polling” is completely different from the “polling” disclosed by Skemer. As such, the Examiner’s position is untenable. The Examiner cannot simply ignore the purpose of the “polling” in Skemer (i.e., for the uploading of accumulated statistics) and assert that this “polling” is magically used for a completely different purpose than that envisioned by Skemer (i.e., if no answer is received from at least one non-responding NAS sending from the NAS communication loss detector agent a

RADIUS stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS).

The Examiner further equates the claimed "and, if no answer is received from at least one non-responding NAS, **sending from the agent a RADIUS stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS,**" with Skemer's "time sessions, accounting data, accounting statistics and accounting purposes." Again, this is incorrect. On the contrary, the "session-timeout" disclosed by Skemer in paragraph [0038] is associated with user authentication to use network resources, not to the "sending from the NAS communication loss detector agent **a RADIUS stop accounting request** to the RADIUS server for all sessions established by the at least one non-responding NAS." Further, Skemer's "time sessions, accounting data, accounting statistics and accounting purposes" are not related to, nor used for, the sending of a "stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS" as in the present invention.

To overcome this glaring deficiency of Skemer, the Examiner alleges, without any supporting evidence, that "it would be inherent that Skemer's polling and accounting would stop accounting data collection for connections that are down." Applicants strenuously disagree with the Examiner's conclusion.

As dictated in MPEP 2112, section IV, the Examiner must provide rationale or evidence tending to show inherency. "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic **necessarily flows** from the

teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Board reversed on the basis that the Examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.

In the present rejection, the Examiner has also failed to provide "objective evidence or cogent technical reasoning to support the conclusion of inherency." Although, according to the Examiner, Skemer "discloses in numerous instances of polling and gathering of statistical data of accounting for billing purposes," there is no disclosure in Skemer regarding the stopping of accounting data collections for connections that are down. Indeed, absent any teaching to the contrary, Applicants submit that Skemer's system would suffer from problems similar to those disclosed on page 2, lines 22-30, of the present patent application.

Accordingly, Applicants submit that independent claim 1 and its corresponding dependent claims are allowable.

With respect to the dependent claims, Applicants herein incorporate the arguments presented above with respect to the independent claims from which the claims depend. The dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Examiner's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Examiner's analysis, combinations, and modifications of the various references or the motives cited for such combinations and modifications. These features and the

appropriateness of the Examiner's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

If the Examiner believes that anything further is necessary to place the application in condition for allowance, the Examiner is requested to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

/ John A. Merecki /

Dated: March 28, 2008

John A. Merecki
Reg. No. 35,812

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, NY 12207
(518) 449-0044 - Telephone
(518) 449-0047 - Facsimile